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STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

DEPT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL

IN THE MATTER OF:

THOMAS REED,)	
CAMPBELL STATION DEVELOPMENT, LLC,)	
STEVE SADLER,)	
TRENCHMARK CONSTRUCTION LLC,)	DIVISION OF WATER
TIM SMITH,)	POLLUTION CONTROL
SMITH TRUCKING AND EXCAVATING CO.,)	
AND SMITH EXCAVATING, INC.)	

RESPONDENTS

CASE NUMBER WPC07-0091

**PETITION OF RESPONDENTS AND REQUEST FOR HEARING
BEFORE THE WATER QUALITY CONTROL BOARD**

Come the Respondents, Thomas Reed, Campbell Station Development, LLC, Steve Sadler, Trenchmark Construction LLC, Tim Smith, Smith Trucking and Excavating Co., and Smith Excavating, Inc., pursuant to T.C.A. 69-3-109 and T.C.A. 69-3-115 and submit a petition appealing the Commissioner's Order and Assessment of July 24, 2007 in this matter.

1. Respondents have enjoyed a long standing good working relationship with the TDEC representative assigned to work in the Campbell Station area and the Commissioner's Order and Assessment comes as a surprise, since there has been continuing and on-going efforts to comply with the various requests of the TDEC representatives associated with the many applications and submittals associated with the Campbell Station development over the years starting in 1999. In all instances, Respondents have filed a Storm Water Pollution Prevention Plan and NOI with TDEC

before proceeding with construction, with one (1) possible exception, which was corrected after the over-sight was discovered and Permit TNR 145600 has since been received. Respondents have filed two (2) applications for ARAP permits for the development of Campbell Station and received ARAP permits NRS 04.064 and NRS 04.120 and Respondents reasonably believe these are the only ARAP permits required for this development. Importantly, at all times storm water protection measures were in place by Respondents under the inspection and approval of the City of Spring Hill which closely watches and over sees compliance with storm water protection guidelines by Respondents. Respondents assert that they have protected the waters of the state and that with the construction of two large regional detention basins at Campbell Station, the waters of the state are protected to a greater extent than existed pre-development of Campbell Station, and homes that formerly flooded on the east side of Grassey Branch, do not flood with the improvements constructed by Respondents.

2. In response to Paragraph 13 of the Commissioner's Order and Assessment, these Respondents state it is admitted that on February 23, 2004 a NOI was submitted. The balance is denied. Respondents received TNR 141465 covering the area in question.

3. In response to Paragraph 14 of the Commissioner's Order and Assessment, the Respondents state it is admitted that a NOI was

filed on June 25, 2004. The balance is denied. Respondents received TNR 145600 covering the area in question.

4. In response to Paragraph 15 of the Commissioner's Order and Assessment, the Respondents state it is admitted that a NOI was filed on June 29, 2004. The balance is denied. Respondents received TNR 145600 covering the area in question.

5. Respondents received TNR 142525 covering Residential Section 16; the ARAP permit was obtained, NRS #04.120. There was an urgency to construct Residential Section 16 with its detention basin to prevent flooding of homes on the east side of Grassey Branch; the flooding was not caused by the development of Campbell Station, but by others. The actions of Respondents were reasonable given the circumstances and the benefits to the public. Importantly, at all times storm water protection measures were in place by Respondents and they have protected the waters of the state. With the construction of a large regional detention basin as part of Residential Section 16, the waters of the state are protected to a greater extent than existed pre-development of Campbell Station, and homes that formerly flooded on the east side of Grassey Branch, do not flood with the improvements constructed by Respondents.

6. In response to Paragraph 17 of the Commissioner's Order and Assessment, the Respondents state that until receiving the

Commissioner's Order and Assessment Reed had the understanding that NRS #04.120 covered the subject minor street in Residential Section 16; the minor street is clearly shown on the ARAP application. Further, it is believed that TDEC officials felt the same way since the May 6, 2005 TDEC letter addressing deficiencies in the NOI application for Residential Section 16 fails to make any mention of the need for another ARAP permit for the development of Residential Section 16.

7. In response to Paragraph 18 of the Commissioner's Order and Assessment, the Respondents state it is admitted that an investigation was conducted as alleged. The balance is denied. Any unstable soils were of recent origin, since circumstances often change quickly during the winter season. It is affirmatively asserted that Respondents, as always, moved reasonably to address the concerns of TDEC representatives. Respondents have received TNR 145600 which covers the site in question.

8. In response to Paragraph 19 of the Commissioner's Order and Assessment, the Respondents state it is admitted personnel may have visited the site. Respondents continued to respond reasonably to address the TDEC concerns. Respondents have received TNR 145600 which covers the site in question.

9. In response to Paragraph 20 of the Commissioner's Order and Assessment, the Respondents have received TNR 145600 which covers the site in question.

10. In response to Paragraph 21 of the Commissioner's Order and Assessment, the Respondents state it is admitted TDEC representatives inspected Residential Section 16 on March 28, 2007. The balance of Paragraph 21 is denied. See Respondents' response set forth in No. 6 above dealing with the minor street in Residential Section 16.

11. In response to Paragraph 22 of the Commissioner's Order and Assessment, the Respondents state that the regional storm water detention constructed at considerable expense by Campbell Station Development, LLC in Residential Section 16 significantly improves and protects the waters of the state, and aids in the prevention of flooding the homes along Grassey Branch. Respondents believe the Oaks portion of the land does not flow toward Grassey Branch or the unnamed wetland.

12. In response to Paragraph 23 of the Commissioner's Order and Assessment, the Respondents state that a further revised submittal was made to TDEC for Residential Section 16 on May 16, 2007 and June 1, 2007 following the May 8, 2007 contact from TDEC asserting further deficiencies. Respondents received TNR 142525 covering the area in question.

13. In response to Paragraph 24 of the Commissioner's Order and Assessment, the Respondents state this allegation is too vague to determine the alleged location, and therefore it is denied. Respondents received TNR 145600 and TNR 141465; these contiguous areas are the most likely place(s) for any activity seen on April 17, 2007. More importantly, storm water protection measures were employed and the waters of the state were protected.

14. In response to Paragraph 25 of the Commissioner's Order and Assessment, the Respondents state this allegation is too vague to determine the alleged location, and therefore, it is denied. Respondents received TNR 145600 and TNR 141465; these contiguous areas are the most likely place(s) for any activity seen on May 1, 2007. More importantly, storm water protection measures were employed and the waters of the state were protected.

15. In response to Paragraph 26 of the Commissioner's Order and Assessment, the Respondents state this allegation is too vague to determine the alleged location, and therefore, it is denied. Respondents received TNR 145600 and TNR 141465; these areas are the most likely place(s) for any activity seen on May 7, 2007. More importantly, storm water protection measures were employed and the waters of the state were protected.

16. In response to Paragraph 27 of the Commissioner's Order and Assessment, the Respondents state the areas discussed on May 8, 2007 have subsequently been permitted with the issuance of TNR 145600 and TNR 141465.

17. In response to Paragraph 28 of the Commissioner's Order and Assessment, the Respondents state the areas discussed on May 8, 2007 have subsequently been permitted with the issuance of TNR 145600 and TNR 141465.

18. In response to Paragraph 29 of the Commissioner's Order and Assessment, the Respondents assert the two (2) ARAP permits NSR #04.064 and NRS #04.120 reasonably cover all construction activities at Campbell Station requiring ARAP permits.

19. In response to Paragraph 30 of the Commissioner's Order and Assessment, the Respondents state all areas at Campbell Station requiring NOIs have been permitted.

20. In response to Paragraph 31 of the Commissioner's Order and Assessment, the Respondents deny they have polluted Grassey Branch or the unnamed wetland. Respondents assert the waters of the state have been protected by Respondents and that waters of Grassey Branch improved by actions of Respondents and flooding of homes on the east side of Grassey Branch mitigated by actions of Respondents.

21. In response to Paragraph 32 of the Commissioner's Order and Assessment, the Respondents deny that the Commissioner's Order and Assessment are warranted or justified under the facts.

WHEREFORE, the Respondents hereby appeal the action of the Commissioner and ask that the Board deny or modify the Order and Assessment of July 24, 2007.

Respectfully submitted,

HOWARD, TATE, SOWELL, WILSON & BOYTE, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on Patrick N. Parker, Tennessee Department of Environment and Conservation, L & C Tower, 20th Floor, 104 Church Street, Nashville, Tennessee 37243-1548, by placing same in U.S. Mail, first-class postage prepaid, on this 22 day of August, 2007.

Barry L. Howard
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